

810-3-70-.01 Definitions.

(1) (a) ~~Amendments to § 40-18-71 have defined the~~ The terms "employer," "employee," and, generally, "wages" ~~to have the same meaning as under the laws of the United States in effect July 1, 1982, or defined in the Internal Revenue Code,~~ as amended from time to time. ~~These amendments supersede the provisions of Section 40-18-70.~~

(b) ~~Act 88-952 added~~ Section 40-18-90, Code of Alabama 1975, provides additional definitions in connection with the requirement for withholding of income tax on certain winnings from wagering transactions.

(c) Section 40-18-70 and Rule 810-3-70-.03 define and provide withholding requirements for a "Provisional Construction Employer" (PCE).

(2) ~~The current definition of the terms in paragraph (1) above are:~~

(a) Employer - ~~Any person for whom an individual performs or performed any service, of whatever nature, as an employee of such person. An employer may be an individual, corporation, partnership, trust, estate, joint-stock company, association, or a group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.~~

1. For the purpose of administering the withholding of income tax on gambling winnings as provided in Act 88-952 Section 40-18-90, Code of Alabama 1975, the term "employer" includes any person (as defined in § 1(5) of Act 88-952 Section 40-18-90) who pays winnings subject to withholding.

2. An employer as defined by Section 40-18-70 is required to withhold tax from wages earned in Alabama by an employee, whether the employee is a resident or a nonresident of Alabama.

(b) Employee - ~~Any individual performing a service if the relationship between him and the person for whom he performs such service is the legal relationship of employer and employee. Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the results to be accomplished by the work but also as to the details and means by which the result is accomplished. An employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing the right is an employer.~~

4. For the purpose of administering the withholding of income tax on gambling winnings as provided in Act 88-952 Section 40-18-90, Code of Alabama 1975, the term "employee" includes any person (as defined in § 1(5) of Act 88-952 Section 40-18-90) who receives winnings subject to withholding.

~~(c) 1. **Wages** - All remuneration for services performed by an employee for his employer. The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions, etc., are wages. The basis on which the remuneration is paid is immaterial. It may be paid on the basis of piecework, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually. The medium in which remuneration is paid is immaterial. It may be paid in cash or in something other than cash. If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages.~~

2. Wages for Withholding Tax Purposes - Generally wages for withholding tax purposes are the same as defined in I.R.C. § 3401, except when the Alabama law is in conflict with the Federal law. "Wages" for Alabama withholding tax purposes, shall include those wages exempt from Federal withholding if the wages represent taxable income under Alabama income tax law, or if there is no provision under the Alabama law for a deduction corresponding to the allowable Federal deduction.

(d) Person - For the purpose of withholding income tax on proceeds from a wagering transaction, the term "person" means all individuals, firms, partnerships, companies, corporations, associations, trustees, receivers, the State of Alabama and any of its agencies, authorities, boards, bureaus, commissions, departments and instrumentalities, each incorporated municipality and any agencies, authorities, boards, bureaus, commissions, and departments of such municipalities, and the several counties of the State of Alabama and any agencies, authorities, boards, bureaus, commissions, and departments of such counties, and any other political subdivisions of the State of Alabama by whatever name or description.

~~(e) **The terms "Winings Subject to Withholding," -means any payment from a wagering transaction, but only if the proceeds from a wager-**~~

~~——— 1. **exceed one thousand dollars (\$1,000.00), and**~~

~~——— 2. **are at least three hundred (300) times as large as the amount of the wager.**~~

~~——— (f) **"Proceeds from a Wager," -has the same meaning as that defined in U. S. Treasury Department regulation 31.3402(q)-1(c)(1).**~~

~~——— (g) **and "Wagering Transaction" -has have** the same meaning as that defined in **U.S. Treasury Department regulation 31.3402(q)-1(c)(3) 26 U.S.C. § 3402, as amended from time to time.**~~

Authors: ~~Ecta B. Spicer~~, Ewell Berry and ~~John H. Burgess~~ **Ann F. Winborne** **Income Tax Division**

Authority: **Act 2007-199, and Sections 40-2A-7(a)(5) and § 40-18-70 and Act 88-952**

History: Adopted June 17, 1988.

Amended: Filed March 20, 1989, effective April 24, 1989.